

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION
BHOPAL**

Subject: : In the matter of Petition under section 86(1) (b) of the Electricity Act, 2003 read with Regulation 4.24 of the MPERC (Power Purchase and Procurement Process) Regulations, 2023 seeking approval of the draft Supplementary Power Supply Agreement to be executed amongst MP Power Management Company Limited, Pench Thermal Energy (MP) Limited and Mahan Energen Limited, for assigning the Power Supply Agreement dated 12.03.2020, executed between MP Power Management Company Limited and Pench Thermal Energy (M.P.) Limited, to Mahan Energen Limited.

Petition No. 25 of 2023 and IA No. 4 of 2023

DAILY ORDER

(Hearing through Video Conferencing)

(Date of hearing: 11th July, 2023)

(Date of daily order: 11th July, 2023)

M/s Pench Thermal Energy (MP) Ltd.

Adani Corporate House, Shantigram,
Near Vaishno Devi Circle,
S. G. Highway, Khodiyar, Ahemdabad– 382421

- **Petitioner**

V/s

1. M.P. Power Management Company Ltd,

Shakti Bhawan, Rampur,
Jabalpur, Madhya Pradesh-482008

2. M/s Adani Power Ltd.

Adani Corporate House, Shantigram,
Near Vaishno Devi Circle,
S. G. Highway, Khodiyar,
Ahemdabad – 382421

3. Mahan Energen Ltd.,

Adani House, C-105, Anand Niketan,
New Delhi- 110021

- **Respondents**

Shri Amit Kapoor, Sr. Advocate and Shri Dilip Kumar Moolchandani appeared on behalf of petitioner.

Shri Ashish Anand Bernard, Advocate and Shri Rakesh Thukral appeared on behalf of Respondent No. 1.

Considering the request for urgent listing in Interlocutory Application (IA), matter was listed for hearing and IA No. 4 of 2023 in P. No. 25 of 2023 is disposed of.

2. During the course of hearing, following questions were raised for consideration;

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- i. “Whether the Supplementary Agreement is for novation or assignment of the work to other party i.e. MEL, as article 33 of PSA provides for assignment only.
- ii. Section 86 (1) (b) of the Electricity Act, 2003 and Regulation 4.24 of MPERC (Power Purchase and Procurement Process) Regulations, 2023 have been invoked in the petition, whereas the bidding was made under Section 63 of the Electricity Act, 2023. Petitioner is required to clarify, whether, in the cases finalized under Section 63, changes/ modifications can be made under section 86 (1) (b), overriding provisions of Section 63.
- iii. As per Clause 4.1.2 of PSA the supplier may in its discretion, grant extension of time for fulfillment of “Conditions precedent” to the utility. Clause 4.1.3 of PSA provides that the utility, may in its discretion, grant waiver of any “Conditions precedent” to the supplier. The Petitioner and Respondent should clearly state the provisions, which empower the Commission to grant extension in time lines for completion of “Conditions Precedents” in light of specific provisions under the PSA.
- iv. As per clauses 18.1 of the PSA and the bidding documents, the installed capacity of the project is clearly mentioned as 1320 MW. The Petitioner should submit the details of the capacity of power plant being built by MEL and both the Petitioner and Respondent should state the legal provisions under which the capacity specifically mentioned in the bidding documents can be changed, post bid.
- v. On the issue of date of commencement of the project and on the period of extension, Petitioner and Respondent No. 1 have different views. Both the parties may submit their final views and mutual consent on these issues, if any.”

Parties are directed to address the Commission on above questions. Put up the case for further hearing on 19.07.2023 at 3.00 PM.

(Prashant Chaturvedi)
Member

(Gopal Shrivastava)
Member (Law)